

SENATE BILL REPORT

SB 5295

As of April 25, 2013

Title: An act relating to appeal and permit procedures under the shoreline management act.

Brief Description: Addressing appeal and permit procedures under the shoreline management act.

Sponsors: Senators Ericksen and Schoesler.

Brief History:

Committee Activity: Energy, Environment & Telecommunications:

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Staff: Diane Smith (786-7410)

Background: The Shoreline Management Act of 1971 (SMA) governs the use of the state's shorelines. The SMA involves a cooperative regulatory approach between local governments and the state. The master plans developed at the local level are approved by the Department of Ecology (DOE).

The SMA requires a property owner or developer to obtain a substantial development permit from the local government for substantial developments within shorelands. Substantial developments include both developments with a total cost or fair market value exceeding \$5,000 and developments materially interfering with normal public shoreline or water use. Shorelands, or shoreland areas, refer to lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark. Some exemptions to the substantial development permit requirement are specified in statute.

Local governments must notify DOE of all permit decisions. Variance and conditional use permits are subject to approval by DOE.

SMA shoreline master plans must include provisions for the administration and enforcement of the permit system. The administration and enforcement of the permit system must ensure that construction pursuant to a permit will not begin or be authorized until 21 days from the date the permit decision was filed or until all review proceedings are terminated. There is an exception to this rule.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The exception to the rule that construction may not begin or be authorized until all review proceedings are terminated applies when the local government grants the permit; the granting of the permit is properly appealed to the Shorelines Hearings Board (SHB); the SHB approves the granting of the permit or a portion of the substantial development; and a petition for judicial review of the SHB decision is properly filed with the superior court. Procedures are specified for the court to stop construction until all review proceedings are final if the court finds that construction would involve significant, irreversible damage to the environment. In the absence of this judicial finding, construction may commence no sooner than 30 days after the appeal of the SHB's decision is filed in superior court.

Summary of Bill: An additional exception to the rule that construction may not begin or be authorized until all review proceedings are terminated, is created. It allows construction landward of the shoreline to begin under an approved but appealed permit before the SHB's final action.

Construction landward of the shoreline area may begin before the SHB's final action if the local government and DOE, in the case of a conditional use or variance permit, makes a written finding that the work is consistent with the requirements of the applicable master program or the permit under appeal.

Construction occurring under these circumstances is at the proponent's risk with the project proponent being responsible for meeting the requirements of the final permit decision. During any judicial appeal of a permit decision, a reviewing court may not consider either the fact that construction landward of the shoreland area was authorized by this exception or the cost or value of that construction as factors favoring the project proponent.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.